IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.358 OF 2004

Hindustan Petroleum Corporation Ltd. ... Petitioner

vs.

1. M/s.SanmarFoundries Ltd. & another. .... Respondents.

Mr.M.D.Siodia with D.S.Retiwala i/b. Rustomji & Ginwala, for Petitioner.

None for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 23rd August,2005

P.C.:-

1. By this petition the petitioner challenges the Award made by the sole Arbitrator directing the petitioner to pay amount of Rs.31,22,142/- and some further amounts to Respondent no.1. The first objection raised to the Award is that the claim made by the Respondent no.1 was barred by Law of Limitation. According to the petitioner, deduction in relation to which the claim was made before the learned Arbitrator, was made while making payment on 31.3.1998, and therefore, in relation to that claim the matter should have been

referred to arbitration within a period of three years from 31.3.1998. But the arbitration clause was invoked on 20.6.2002 and therefore, the claim was barred by Law of Limitation. This objection has been considered by the learned Arbitrator in the Award and the learned Arbitrator has rejected the objection. The relevant observations from the Award are as under:

> "6. Limitation :
>
> The Respondent contended that the claim in the Statement of Claim is barred by the Limitation on the ground that work was completed on 06.03.1998 and the Arbitration proceedings had been commenced on 16.02.2002 and that the suit/proceedings for recovery of debt should have been filed within 3 years from the date when the said debt became due and payable. In the instant case it was found that last payment of Rs.3,49,970/- was made by the Respondent vide their cheque no.766632 to the Claimant on 31.03.1999 and hence, three years period would start from this date.
>
> I hold that the claimant is not barred

> from seeking Arbitration to recover the pending amounts on account of clause relating to Limitation."

The learned Counsel appearing for petitioner submits that firstly the date 31.3.1999 was incorrectly taken by the learned Arbitrator because on that date payment was made for erection and commissioning. The deduction to which the claim relates, was made on 31.3.1998 and therefore, the date 31.3.1999 is not relevant. It is alternatively argued that even if the date 31.3.1999 is taken as correct date for accrual of cause of action and therefore, the reference is within the limitation from 31.3.1999, the learned Counsel submits that the learned Arbitrator has taken date as 16.2.2002 as the date of reference which is incorrect date. According to the learned Counsel, the correct date is 20.6.2002 and on 16.2.2002 only demand notice was sent, but when no payment was made pursuant to the demand notice arbitration clause was invoked by letter dated 20.6.2002. Therefore, even if the date 31.3.1999 is taken to be the correct date, the reference is not made within a period of three years from that date and therefore, also the claim was barred by the Law of Limitation.

2. The respondents have been served, but none appears for the respondents. I have gone through the record. Perusal of the Award

shows that the claim was made in relation to the deduction that was made from the bill submitted by the respondent no.1 regarding supply of material and that final payment was made on 31.3.1998 and while making final payment deduction was made. The grievance was made before the learned Arbitrator in relation to that deduction. Therefore, accrual of cause of action would be 31.3.1998 and not 31.3.1999 as has been held by the learned Arbitrator. Perusal of the record shows that the respondent had sent a letter dated 16.2.2002 to the petitioner and by that letter the respondent no.1 had demanded the amount. The relevant paragraph from that letter reads as under:-

> "We have accordingly been instructed by our Clients to call upon you to pay our clients the aforesaid sum of Rs.95,35,575/- (Rupees Ninety Five lakhs Thirty Five Thousand Five Hundred Seventy Five only) together with interest at 18% per annum from 1.2.2002 till the date of payment within 15 days of receipt of this notice, failing which our Client will be compelled to initiate appropriate proceedings for recovery of the aforesaid amounts inter alia by referring the claim/dispute to Arbitration in terms of the contract holding you liable for all cost and consequences thereof."

It is thus, clear by this letter dated 16.2.2002 that the arbitration clause was not invoked but what was done was that the amount was demanded and the petitioner was told that if the petitioner does not make payment of the amount, the arbitration clause would be invoked. As the petitioner did not make payment, letter dated 20.6.2002 was sent. Last two paragraphs of that letter are relevant which read as under:-

> "As per clause 39 of the General Purchase Conditions for indigenous Equipment and Materials annexed to the Purchase Order, all disputes arising out of the purchase order shall be referred to the sole arbitration of a person selected by us out of a panel of three persons nominated by you.
>
> Hence, we hereby request you to forward the panel of names at the earliest to enable us to select a person and to proceed with the arbitration in accordance with the aforesaid clause 39 and the provisions of the Arbitration and Conciliation Act,1996."

It is thus clear that the arbitration clause was invoked by letter dated 20.6.2002 and not by letter dated 16.2.2002. The letter dated 16.2.2002 was merely a demand notice. Thus, as the arbitration clause was

invoked on 20.6.2002 even if the date 31.3.1999 is taken as the date of accrual of cause of action as has been held by the learned Arbitrator, then also the invocation of arbitration clause is not within a period of three years from that date. Therefore, the reference was barred by the law of limitation. Looking at the matter from any point of view, it is clear that the reference made by the respondent no.1 was barred by the Law of Limitation. The learned Arbitrator has committed fatal error of Law in holding that the reference was not barred by the Law of Limitation. In the result, therefore, the petition is required to be allowed. The petition is accordingly allowed. The Award impugned in the petition is set aside. The respondent no.1 is directed to pay cost of this petition to the petitioner as incurred by the petitioner.